

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK PHILIP FA'AITA,  
Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et  
al.,  
Defendants.

Case No. 23-cv-03649 BLF (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, who appears to be a former federal prisoner, filed the instant *pro se* civil rights action against the Federal Bureau of Prisons Lompoc (“BOP Lompoc”) and several individuals at the prison. Dkt. No. 1 at 1-2.<sup>1</sup> Plaintiff’s motion for leave to proceed *in forma pauperis* will be addressed in a separate order. Dkt. No. 2.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a

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<sup>1</sup> This matter was reassigned to this Court on August 16, 2023. Dkt. No. 7.

1 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any  
2 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
3 upon which relief may be granted or seek monetary relief from a defendant who is immune  
4 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally  
5 construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988);  
6 *Jackson v. Carey*, 535 F.3d 750, 757 (9th Cir. 2003).

7 Because Plaintiff challenges the actions of federal employees at BOP Lompoc, his  
8 action must be construed as one under *Bivens v. Six Unknown Federal Narcotics Agents*,  
9 403 U.S. 388, 392–97 (1971) (recognizing a private right of action for damages for  
10 constitutional violations by federal employees or their agents). To state a *Bivens* claim, a  
11 plaintiff must allege that the defendant violated a federal constitutional right while acting  
12 under color of federal law. *See Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (citing *Van*  
13 *Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991)). Except for the replacement of a state  
14 actor by a federal actor, actions under 42 U.S.C. § 1983 and *Bivens* are identical. *Id.*; *see*  
15 *also Wilson v. Layne*, 526 U. S. 603, 609 (1999) (qualified immunity analysis same under  
16 *Bivens* and § 1983). Accordingly, when reviewing a *Bivens* action for which there is no  
17 case on point, § 1983 cases may be applied by analogy. *See, e.g., Tekle v. United States*,  
18 511 F.3d 839, 844 (9th Cir. 2007) (applying § 1983 cases to analysis of *Bivens* claim that  
19 officers used excessive force under Fourth Amendment, and of qualified immunity defense  
20 to same claim).

21 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a  
22 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
23 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
24 plausibility when the plaintiff pleads factual content that allows the court to draw the  
25 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting  
26 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal  
27 conclusions cast in the form of factual allegations if those conclusions cannot reasonably  
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1 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55  
 2 (9th Cir. 1994).

3 **B. Plaintiff’s Claims**

4 Plaintiff names four defendants: BOP Lompoc, Warden Felipe Martinez, Ms.  
 5 Corlone (Camp Administrator), and Mr. Espinoza (SHU Lieutenant). Dkt. No. 1 at 1-2.  
 6 Plaintiff claims that he was held in the SHU (solitary housing unit) for over 400 days and  
 7 has now developed mental and psychological issues. *Id.* at 3. He claims Defendants  
 8 violated his rights under the Eighth Amendment because Mr. Martinez “put me in the  
 9 SHU,” Ms. Corlone “kept me in the SHU,” and Mr. Espinoza “did not do enough to get me  
 10 discharged from the SHU.” *Id.* at 5. Plaintiff seeks damages for his pain and suffering and  
 11 permanent psychological issues, his “wife/kids pain and suffering,” as well as for future  
 12 treatment and medicine. *Id.* at 7. There are several problems with this complaint.

13 First of all, Plaintiff cannot proceed against BOP Lompac. The only available relief  
 14 in a *Bivens* action is an award of money damages for any injuries caused by a defendant  
 15 acting in his or her individual capacity. *Ministerio Roca Solida v. McKelvey*, 820 F.3d  
 16 1090, 1093-96 (9th Cir. 2016). Because the purpose of *Bivens* is to deter the individual  
 17 officer, the *Bivens* remedy does not extend to damages actions against federal agencies,  
 18 even where individual officers are protected by qualified immunity. *See FDIC v. Meyer*,  
 19 510 U.S. 471, 484-86 (1994). Accordingly, Plaintiff has no remedy against BOP Lompoc,  
 20 who must be dismissed from this action.

21 Second, the allegations are insufficient to state an Eighth Amendment claim against  
 22 the individual Defendants, assuming such a claim is cognizable under *Bivens*. The  
 23 Constitution does not mandate comfortable prisons, but neither does it permit inhumane  
 24 ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner  
 25 receives in prison and the conditions under which he is confined are subject to scrutiny  
 26 under the Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993). A prison  
 27 official violates the Eighth Amendment when two requirements are met: (1) the  
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1 deprivation alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834  
2 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a  
3 sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297). Plaintiff's sparse  
4 allegations fail to satisfy either of these two elements.

5 With regard to the first element, Plaintiff provides no description of the conditions  
6 in the SHU to establish that he suffered a deprivation (of a basic necessity) that is  
7 sufficiently serious to satisfy the objective component. The more basic the need, the  
8 shorter the time it can be withheld. *See Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.  
9 2000). For example, substantial deprivations of shelter, food, drinking water or sanitation  
10 for four days are sufficiently serious to satisfy the objective component of an Eighth  
11 Amendment claim. *See id.* at 732-733. With regard to the second element, Plaintiff fails  
12 to allege each Defendant's state of mind to establish that they acted with deliberate  
13 indifference. *See, e.g., Helling*, 509 U.S. at 32-33 (inmate health); *Wilson*, 501 U.S. at  
14 302-03 (general conditions of confinement). A prison official cannot be held liable under  
15 the Eighth Amendment for denying an inmate humane conditions of confinement unless  
16 the standard for criminal recklessness is met, i.e., the official knows of and disregards an  
17 excessive risk to inmate health or safety. *See Farmer*, 511 U.S. at 837. The official must  
18 both be aware of facts from which the inference could be drawn that a substantial risk of  
19 serious harm exists, and he must also draw the inference. *See id.* An Eighth Amendment  
20 claimant need not show, however, that a prison official acted or failed to act believing that  
21 harm actually would befall an inmate; it is enough that the official acted or failed to act  
22 despite his knowledge of a substantial risk of serious harm. *See id.* at 842.

23 In the interest of justice, Plaintiff shall be granted leave to file an amended  
24 complaint that contains sufficient allegations to support a *Bivens* claim against individual  
25 Defendants.

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## CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The complaint is **DISMISSED with leave to amend**. Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file an amended complaint using the court's form complaint to correct the deficiencies discussed above. The amended complaint must include the caption and civil case number used in this order, Case No. C 23-cv-03649 BLF (PR), and the words "AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on the form complaint in order for the action to proceed.

The amended complaint supersedes the original, the latter being treated thereafter as non-existent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). Consequently, claims not included in the amended complaint are no longer claims and defendants not named in the amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

2. **Failure to respond in accordance with this order in the time provided will result in the dismissal of this action with prejudice to state a claim for relief without further notice to Plaintiff.**

3. The Clerk shall terminate the Federal Bureau of Prisons as a party to this action as Plaintiff cannot state a *Bivens* claim against this agency.

The Clerk shall include two copies of the court's form complaint with a copy of this order to Plaintiff.

**IT IS SO ORDERED.**

Dated: November 20, 2023

  
BETH LABSON FREEMAN  
United States District Judge